IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/03/2004

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.16479 of 2003

P.Muniammal .. Petitioner

-Vs-

1. The Chairman-cum-Managing
Director, Tamilnadu Civil
Supplies Corporation Ltd.,
42, Thambuswamy Road
Kilpauk, Chennai-600 010.

2. The Senior Regional Manager
(North), Tamilnadu Civil
Supplies Corporation Ltd.,
No.9, Canran Smith Road
Gopalapuram, Chennai-600 086. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Mandamus as stated therein.

For Petitioner : Mr.G.Thangavel

For Respondent : Mr.S.K.Selvaraj

:ORDER

Disputing the entry of her date of birth in the service register maintained by the respondent/Corporation as 1.7.1943 and asserting that her correct date of birth is 2.2.1959, as per the Birth Certificate dated 26.6.2003 issued by Tiruvottiyur Municipality under the Registration of Births and Deaths Act, 1969 (for brevity "the Act") pursuant to the order dated 25.6.2003 of the learned District Munsif-cumJudicial Magistrate, Tiruvottiyur made under Section 13(3) of the Act in C.M.P.No.3339 of 2003, the petitioner seeks a writ of Mandamus to direct the respondents herein to forbear from retiring her arbitrarily and prematurely till such time a finality is reached with regard to her correct date of birth as 2.2.1959 in the competent Court of law as directed by the second respondent in his memorandum dated 27.5.2003.

2.1. The undisputed facts of the case are that, the petitioner on her own accord submitted herself to the Civil Medical Board for ascertaining her age, of course at the reference made by the respondent/ Corporation, and the

Medical Board in their certificate dated 26.6.2000 opined that the petitioner is aged 57 years as on 26.6.2000 and based on the said Medical report, her age was entered in the Physical Fitness Certificate issued by the Civil Medical Board on 30.6.2000 as 57 years, and the petitioner affixed her signature acknowledging her age. Based on the above details, the petitioner was proposed to be retired on 30.6.2003 on superannuation.

2.2. Realising that her age was entered in the service register maintained by the respondent/Corporation as 57 years as on 30.6.2000 and she was proposed to be superannuated on 30.6.2003, the petitioner approached the learned District Munsif-cum-Judicial Magistrate, Tiruvottiyur in C.M.P.No.3339 of 2003, of course, without impleading the respondent/Corporation as a party therein, for registration of her date of birth as 2.2.1959 in the Births and Deaths Register maintained by the Tiruvottiyur municipality and the learned District Munsif-cumJudicial Magistrate, Tiruvottiyur, exercising the power conferred under Section 13(3) of the Act, by order dated 25.6.2003 made in C.M.P. No.3339 of 2003 directed the Tiruvottiyur Municipality to record the date of birth of the petitioner as 2.2.1959 in the Births and Deaths Register maintained by them. Based on the said direction, the date of birth of the petitioner was entered in the Births and Deaths Register as 2.2.1959 and a birth certificate was issued to her on 26.6.2003 by the Tiruvottiyur Municipality, just four days before her due date for superannuation, viz., 30.6.2003, relying on which, the petitioner has preferred this writ petition.

3.1. According to Mr.G.Thangavel, learned counsel for the petitioner, the claim of the petitioner is based on the order dated 25.6.2003 of the learned District Munsif-cum- Judicial Magistrate made in C.M. P.No.3339 of 2003 and the Birth Certificate dated 26.6.2003 issued by the Tiruvottiyur Municipality and therefore, the reliance placed by the respondent/Corporation on the age certificate issued by the Civil Medical Board on 26.6.2000, and the consequential proposal to retire the petitioner on 30.6.2003 is not tenable in law.

3.2. Mr.G.Thangavel, learned counsel for the petitioner contends that in a proceedings under Section 13(3) of the Act, there is no need to implead the respondent/ Corporation, viz., the employer.

4.1. In reply, Mr.S.K.Selvaraj, learned counsel for the respondent/ Corporation contends that the petitioner having approached this Court at the verge of her retirement is not entitled to seek relief as prayed for, particularly when the petitioner has submitted herself to the Medical Board, which opined that her age was 57 years on 30.6.2000.

4.2. Mr.S.K.Selvaraj, learned counsel for the respondent/ Corporation further contends that the Birth certificate dated 26.6.2003 from the Tiruvottiyur Municipality, based on the directions of the learned District Munsif-cum-Judicial Magistrate, Tiruvottiyur dated 25.6.2003 in C.M.P.No.3339 of 2003, is not binding on the respondent/ Corporation, as they are not a party to the same.

5. I have given careful consideration to the submissions of both

sides.

6. At this juncture, it is apposite to refer Section 13 of the Act, which reads as follows: "Section: 13 - Delayed registration of Births and Deaths (1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor; but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other office authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefor and any such birth or death may be registered during the pendency of any such action." (emphasis supplied)

7.1. It is trite law that in a case where the controversy over the date of birth of an employee has been raised long after joining the service and the matter has engaged the attention of the authority concerned and has been determined by following the procedure prescribed under the service rules or general instructions issued by the employer and it is not the case of the employee that there has been any arithmetical mistake or typographical error patent on the face of the record, the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution should not interfere with the decision of the employer, vide G.M., Bharat Coking Coal Ltd. v. Shib Kumar Dushad , (2000) 8 SCC 696.

7.2. It is settled law that the correction of date of birth at fag end of service with an object of continuing in service should not be entertained, vide Burn Standard Co. Ltd. v. Dinabandhu Majumdar, AIR 1 995 SC 1499. In the said decision, the Apex Court also deprecated, as unwarranted, the entertainment of writ petitions by the High Courts and granting interim relief in the matters of retirement of employees of the Government or its instrumentalities seeking correction in the date of birth in the service register at the fag end of their service.

7.3. That apart, in Jivan Kishore v. Delhi Transport Corporation, AIR 1980 SC 1251, the Apex Court held that where there is wide discrepancy between the date of birth as found in the birth certificate and the physical fitness certificate issued by the Medical Board, the age as assessed by the

Medical Board appointed by the employer can be accepted.

8. The law enunciated in the decisions referred supra, squarely applies to the facts and circumstances of the present case. Moreover, in my considered opinion, assuming the petitioner has obtained a Birth certificate dated 26.6.2003 from the local body, namely the Tiruvottiyur Municipality, based on the directions of the learned District Munsif-cum-Judicial Magistrate, Tiruvottiyur dated 25.6.2003 in C.M.P. No.3339 of 2003, the same is not binding on the respondent/Corporation, as they are not a party to the same.

For the reasons aforesaid, this writ petition fails and is, therefore, dismissed. No costs.

Index : Yes
Internet : Yes

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To:

1. The Chairman-cum-Managing Director, Tamilnadu Civil Supplies Corporation Ltd., 42, Thambuswamy Road Kilpauk, Chennai-600 010.

2. The Senior Regional Manager (North), Tamilnadu Civil Supplies Corporation Ltd., No.9, Canran Smith Road Gopalapuram, Chennai-600 086.